

JERRY HARKINS, )  
 )  
 Petitioner, ) 3:10-cv-00372-ECR-RAM  
 )  
 vs. ) **ORDER**  
 )  
 JACK PALMER, *et al.*, )  
 )  
 Respondents. )  
 )  
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On June 3, 2011, petitioner filed a motion for an extension of time to oppose the motion to dismiss (ECF No. 24) and a motion asking the Clerk of Court to send him a copy of respondents' motion to dismiss (ECF No. 25). Petitioner appears to indicate that he learned of the motion to dismiss by way of the Court's minute order of April 15, 2011. Respondents' motion to dismiss is

1 accompanied by a certificate of service of the motion to petitioner at his address of record. (ECF  
2 No. 16, at p. 8). Nevertheless, within ten (10) days from the issuance of this order, respondents shall  
3 ensure that petitioner was properly served with a copy of the motion to dismiss and all exhibits  
4 thereto.

5 Petitioner has requested an extension of time to file an opposition to the motion to dismiss.  
6 (ECF No. 24). Good cause appearing, the motion is granted. Petitioner is granted sixty (60) days  
7 from the date of issuance of this order to file an opposition to the motion to dismiss.

8 Finally, petitioner has filed a second motion for the appointment of counsel. (ECF No. 23).  
9 There is no constitutional right to appointed counsel for a federal habeas corpus proceeding.  
10 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.  
11 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191,  
12 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th  
13 Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of  
14 the case are such that denial of counsel would amount to a denial of due process, and where the  
15 petitioner is a person of such limited education as to be incapable of fairly presenting his claims.  
16 *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970).

17 By order filed December 14, 2010, this Court denied petitioner's first motion for the  
18 appointment of counsel. (ECF No. 10). There is nothing in the instant motion for the appointment  
19 of counsel that causes this Court to alter its prior denial of counsel. The petition on file in this action  
20 is well-written and sufficiently clear in presenting the issues that petitioner wishes to bring. The  
21 issues in this case are not complex. Counsel is not justified in this instance. The motion is denied.


22 **IT IS THEREFORE ORDERED** that within **ten (10) days** from the issuance of this order,  
23 respondents **SHALL ENSURE** that petitioner was properly served with a copy of the motion to  
24 dismiss and all exhibits thereto (ECF Nos. 16-21).

1       **IT IS FURTHER ORDERED** that petitioner's motion (ECF No. 25) for the Clerk of Court  
2 to send him a copy of respondents' motion to dismiss is **DENIED**, without prejudice, and subject to  
3 the respondents properly serving petitioner with said motion and exhibits.

4       **IT IS FURTHER ORDERED** that petitioner's motion for an extension of time (ECF No.  
5 24) is **GRANTED**. Petitioner is granted **sixty (60) days** from the date of issuance of this order to  
6 file an opposition to respondents' motion to dismiss.

7       **IT IS FURTHER ORDERED** that petitioner's second motion for the appointment of  
8 counsel (ECF No. 23) is **DENIED**.

9               Dated this \_ 7th \_ day of June, 2011.

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11                               \_\_\_\_\_  
12                               UNITED STATES DISTRICT JUDGE